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OFFICE OF PETITIONS

In re Application of	:
Westby et al.	:
Application No. 10/714,478	:DECISION ACCEPTING
Filed: November 13, 2003	:SHOW CAUSE
Attorney Docket No. STL 8646	:

This is a decision issued in response to the applicants' July 12, 2007 communication entitled **Response To Order To Show Cause Why The Office Should Not Terminate The Present Reissue Proceeding**, requesting that prosecution of the above-identified application be continued.

Applicants' communication is before the Office of Patent Legal Administration (OPLA) for decision.

BACKGROUND

1. The present application ("present reissue proceeding") was filed November 13, 2003, for reissue of U.S. Patent No. 6,317,800 (the '800 patent), which issued November 13, 2001.
2. A review of the Office's financial records for the '800 patent reveals that the 3.5 year maintenance fee due and not paid could have been paid during the period from November 15, 2004 (November 13, 2004 was a Saturday) through May 13, 2005, or with a surcharge during the period from May 16, 2005 (May 14, 2005 was a Saturday) through November 14, 2005 (November 13, 2005 was a Sunday). As a result, the '800 patent expired after midnight on November 13, 2005, for failure to pay the 3.5 year maintenance fee due. See 1302 *Official Gazette* 1232 (January 10, 2006).
3. On November 7, 2006, in the present reissue proceeding, an Order to Show Cause was mailed, but was returned to the Office as undeliverable.
4. On February 1, 2007, a change of correspondence address for the present reissue

proceeding was submitted by facsimile transmission, in response to a telephone communication from Fred A. Silverberg, Senior Legal Advisor in the Office of Patent Legal Administration.

5. On February 2, 2007, the Order To Show Cause was remailed to the new correspondence address. The remailed Order To Show Cause stated that the '800 patent had expired for failure to pay the first maintenance fee, the Director of the Office no longer had the authority under 35 U.S.C. § 251 to reissue the '800 patent, and the Office intended to terminate the present reissue proceeding and hold the application for reissue of the '800 patent to be an abandoned application. Applicants were given a period of 30 DAYS from the mailing of the remailed Order To Show Cause why the Office should not terminate the present reissue proceeding.
6. In response, on March 8, 2007, *inter alia*, the present communication entitled **Response To Order To Show Cause Why The Office Should Not Terminate The Present Reissue Proceeding** and an authorization to charge counsel's deposit account for any deficiency associated with the communication were filed. Applicants requested that prosecution of the application be continued, as the owner of the '800 patent had also filed, on March 8, 2007, the requisite first maintenance fee along with a petition (and petition fee) to accept late payment of the maintenance fee based upon the patent owner's unavoidable failure to timely pay the maintenance fee.
7. On April 26, 2007 the Office issued a Second Order to Show Cause finding that the response to the first Show Cause Order of February 2, 2007 was not sufficient to provide basis for resuming examination of the application. Applicants were provided with a period of six months to again show cause why the Office should not terminate the present reissue proceeding. Applicants were advised that if applicants proposed to show cause why the present reissue proceeding should not be terminated, applicants' showing must include either: A) a copy of a favorable determination on the merits of the March 8, 2007 petition to accept late payment of the first maintenance fee, or B) an explanation of why the proceeding should not be terminated at that point in time even though the original patent has expired. Applicants were also to show due diligence.
8. On July 12, 2007, applicants filed the present response, entitled **Response To Second Order To Show Cause Why The Office Should Not Terminate The Present Reissue Proceeding**.

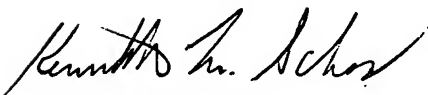
DECISION

The papers filed by applicant show that a favorable decision has been issued on a petition to accept late payment of the 3.5 year maintenance fee of the '800 patent. The Office of Petitions mailed a decision granting the petition on July 10, 2007.

Further, a review of the Office's records reveals that a 3.5 year maintenance fee payment of \$900.00, was "accounted" to the '800 patent on July 5, 2007. Thus, the '800 patent is not expired for failure to pay the first maintenance fee. In addition, the present reissue proceeding has been properly brought before the Office of Patent Legal Administration for consideration, and it has now been shown that the original patent is not expired. The applicants also demonstrated due diligence in filing the required responses. Accordingly, consideration of the application will be resumed, and jurisdiction over the application is being forwarded to the examiner for further examination, as appropriate, in due course.

CONCLUSION

1. Applicants are deemed to have shown cause as to why the Office should not terminate the instant reissue proceeding.
2. Consideration of the reissue application will be resumed.
3. Jurisdiction over the application file is being returned to Technology Center Art Unit 2116 for further examination, as appropriate, in due course.
4. Any further communications as to the merits of the reissue application should be directed to examiner Thuan Du, in Technology Center Art Unit 2116, who can be reached at 571-272-3673.
5. Telephone inquiries related to this decision should be directed to Maria Nuzzolillo, Legal Advisor, at (571) 272-8150.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration